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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,740	03/31/2004	Jonathan Hitt	00655P1240US	5139

32116 7590 07/21/2006

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER  
500 W. MADISON STREET  
SUITE 3800  
CHICAGO, IL 60661

EXAMINER
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DUONG, THO V

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/813,740	HITT ET AL.	
	Examiner	Art Unit	
	Tho v. Duong	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,7-12,26-29 and 31-33 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-25 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6 and 30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Receipt of applicant's amendment filed 4/19/06 is acknowledged. Claims 1-32 are pending. Claims 3, 5, 7, 8-12, 26-29 and 31-33 remain withdrawn from further consideration.

#### ***Response to Arguments***

Applicant's arguments filed 4/19/06 have been fully considered but they are not persuasive. Applicant's argument that the Rhodes does not disclose a frame for supporting a heat exchanger because the frame is a necessary part of the heat exchanger, has been very carefully considered but is not deemed to be persuasive. Applicant is reminded that the examiner must interpret the limitation as broadly as it reasonably allows. In this instant case, the core (10), which includes headers (14, 16) and tube, is considered to read as the heat exchanger. Without the frame, the heat exchanger is still able to perform the heat exchanging function, which exchanging heat between a fluid flowing inside the tube and a second fluid such as air outside of the tube. The frame is mainly for supporting the heat exchanger and not for any heat exchanging function. Regarding claim 30, Applicant's argument that Rhodes does not disclose a frame supporting two different heat exchangers, has been very carefully considered but is not deemed to be persuasive. Once again, the examiner must interpret the limitation as broadly as it reasonably allows. In this instant case, Rhodes discloses a heat transfer device comprises at least two heat exchangers and a frame system includes at least two framing structures supporting the heat exchangers, wherein the frame system is the same or obvious to the frame as claimed in claim 1.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on

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combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this instant case, reference to Olson is not relied on to disclose the adjustable in length of the frame but to teach supports on the transverse side adapted to secure to a vehicle to support the frame.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2,4,6 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes et al. (US 4,619,313) in view of Olson (US 5,360,059). Rhodes discloses (figures 1 and 3-4) a frame for mounting at least one heat exchanger in a vehicle comprising a longitudinal side and a transverse side, at least one of the side being adjustable in length in the direction of the side such as the side (50) is capable of being biased toward another side of the pair; fasteners (36,38,40,79) on the sides adapted to fasten to the heat exchanger (10) between the sides upon the assembly of the heat exchanger; wherein the longitudinal and transverse sides comprises a pair of first side (46,48,50,52) extending between a pair of second sides (66,74,76); the pair of longitudinal side being infinitely adjustable in length in the direction of the pair of sides. The recitation that an element is "sufficient" to perform a given function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In this case, Rhodes discloses (figure 4) that the frame is adjustable in length in direction (53). Therefore, if a different size of heat exchanger core (10) is used, the frame would be

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capable of accommodate the different size heat exchanger by adjusting the length of the frame in the direction (53). Regarding claim 30, Rhodes discloses (figures 1,2 and 6) two heat exchangers (10,10A), each includes headers (14,16) on their top and bottom, and the fasteners (79) are on top and bottom sides of the frame and fasten the frame to the heat exchanger headers. Rhodes does not disclose supports on the side adapted to secure a vehicle to support the frame therein. Olson discloses (figure 1) a frame accommodates a radiator therein, wherein the frame has supports (18,20) on the side for a purpose of securing the frame to a vehicle. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Olson's teaching in Rhodes's heat exchanger for a purpose of securing the frame to a vehicle.

***Allowable Subject Matter***

Claims 13-25 are allowed.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

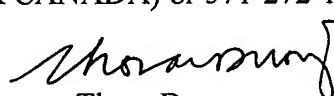
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tho v. Duong whose telephone number is 571-272-4793. The examiner can normally be reached on M-F (first Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keasel Eric can be reached on 571-272-4929. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Tho v Duong  
Primary Examiner  
Art Unit 3753



TD

July 11, 2006